



# THE MOHEGAN TRIBAL GOVERNMENT

March 15, 2018

Secretary Marlene Dortch  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

RE: The Mohegan Tribe of Connecticut's Opposition to draft Report and Order (WT 17-79)

Dear Chairman Pai and Members of the Commission:

We write to oppose the draft Report and Order released on March 1, 2018 that purports to narrow the obligations of the Federal Communications Commission (FCC) under the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) and restricts tribal rights secured by those laws. The draft order's approach will be detrimental to tribal governments, tribal cultural and historic resources and undermines the trust relationship between tribes and the Federal Government by placing industry interests over those of tribes.

Fifteen years ago, the FCC stated that it was impractical for it to consult on thousands of existing, new and proposed cell sites, despite its obligation to do so. In good faith, Indian Country endorsed the Tower Construction Notification System ("TCNS") as a solution that facilitated the telecommunications industry working directly with tribal nations to address issues of concern. This act meant that it would be unnecessary in nearly all cases for the FCC to engage in consultation directly except in cases of conflict between proponents and a tribe(s). The TCNS has proven to be an effective and efficient means for tribal reviews of FCC regulated communications projects. The alternative, which will be the outcome if the current order is approved, is that tribal nations will demand direct consultations with the FCC on potentially hundreds of larger tower sites, a far slower process than the tribal-industry process.

The Commission has a trust responsibility to tribal nations, not to the wireless industry. The draft Report and Order does not reflect this trust responsibility and diminishes the Mohegan Tribe's ability to protect our cultural and historic properties.

The draft Report and Order:

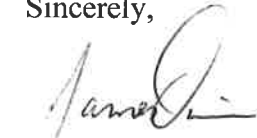
- (1) Concludes that small wireless facilities do not qualify as "undertakings" or "major federal actions", thereby circumventing the protections of NHPA and NEPA and minimizing the trust responsibility to tribes;
- (2) Eliminates tribal fees for initial historic preservation assessments (which often number in the hundreds per month) by tribal governments, encouraging industry to exclusively rely on its own consultants whose understanding of Native culture is limited, rather than access the unique expertise of tribal nations with regard to impacts on their own cultural

areas; and

- (3) Mischaracterizes the extent of formal consultation carried out prior to the release of the draft Report and Order by including listening sessions, briefings and other meetings that are not true consultations.

Rolling back protections for tribal cultural and historic properties will have grave consequences for the Mohegan Tribe. Undercutting tribal consultation by placing the interests of industry over those of tribes sets a horrible precedent that will ripple across the spectrum of federal agencies with regard to how they conduct tribal consultation. It will damage the trust relationship with tribes by bypassing tribal concerns in favor of those of industry. It will lead to the damage of tribal cultural and historic properties. Once tribal cultural and historic properties are damaged, the damage is irreversible. Therefore, like other tribes throughout the country, we will have no recourse if the deployment of wireless technology results in the destruction of our tribal cultural and historic properties. Accordingly, we ask that all Commissioners vote against adopting this draft Report and Order.

Sincerely,



James Quinn  
Mohegan Tribal Historic Preservation Officer